

ELDER ABUSE: *the* INVESTIGATION PROCESS

TRAVIS MAYO, ASSISTANT ATTORNEY GENERAL | OFFICE OF
MEDICAID FRAUD AND ABUSE CONTROL

Investigating and prosecuting criminal cases of elder abuse or neglect is far from a walk across the prairie. It can be more like climbing a summit along the Appalachian Mountains, only to look down and see the forest on the other side.

The trees: the unavoidable delay in beginning a criminal investigation, victims with mental or physical health issues, a criminal statute with vague terms, and a thin line between civil negligence and criminal conduct.

“Without question, elder abuse, both physical and exploitation, are among the most difficult cases we prosecute,” said Warren County Commonwealth’s Attorney Chris Cohron.

In 2010, the Attorney General’s Office of Medicaid Fraud and Abuse Control successfully prosecuted a criminal case of elder abuse. It stemmed from the investigation of allegations of abuse or neglect of a resident at Richmond Health and Rehabilitation Complex in Madison County. The family of the victim placed a hidden camera in the victim’s room for about three weeks, and the video captured the staff’s abuse and neglect.

In one recording, a staff member physically forced the victim’s legs apart to

change her adult briefs. In another, a staff member held the victim’s wrists, feet and ankles down in bed as the victim tried to free herself. Staff held the victim’s hands above her head, they roughly moved her from side to side in her bed, and they pulled her out of her bed by her wrists and neck.

The victim’s family also provided photographs revealing severe bruising to her upper left arm and shoulder, her left ear and her left shoulder blade area. While the family had voiced concern about the victim’s bruises, the facility did not properly assess or investigate the bruises of unknown origin. The director of nursing at the facility attributed the bruising to the resident’s combative behaviors. After an investigation by the MFCU, the office obtained convictions through guilty pleas by three defendants — one nurse and two certified nursing assistants. As part of their pleas, the defendants agreed to not work with vulnerable adults or children, not work in the health care industry, and not work for Medicare or Medicaid providers.

That case came to MFCU from the Department for Community Based Services and the Office of the Inspector General. Under KRS 209.030, any person with